IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

Crl.MC.No. 2098 of 2007()

SC.501/2004 of III ADDL.ASSISTANT SESSIONS COURT, KOZHIKODE

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PETITIONER:

M.SUBASH, S/O. UNNIKRISHNAN,
AGED 32 YEARS, AND RESIDING AT MELEDATH HOUSE,
AYANIKATT PARAMBA, KUNDAYITHODU, P.O.KOLATHARA,
KOZHIKODE-673 655.

BY ADV. SRI.P.S.SREEDHARAN PILLAI
SMT.C.G.PREETHA
SMT.P.RANI DIOTHIMA

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2098 of 2007

Dated this the 29th day of June, 2007

O R D E R

Petitioner is accused No.30 in a prosecution for offences punishable, inter alia, under Sections 307, 353 and 332 read with 149 I.P.C. Some of the co-accused who faced trial have already been found not guilty and acquitted. The petitioner was not available to face trial along with the co-accused in such trial. Those accused were acquitted on the ground that there was no evidence to identify them as some of the miscreants involved in the incident which had taken place.

2. The petitioner has now come to this Court with a request to invoke the powers under Section 482 Cr.P.C. The co-accused having secured acquittal on the ground that they were not properly identified, the learned counsel for the petitioner submits that the chance of the petitioner being identified is also remote. There is no chance of this prosecution coming to successful culmination. The possibility of conviction being bleak, the proceedings may be quashed. This in short is the prayer.

3. I am of the opinion that the request of the petitioner cannot be accepted. In the trials held against the co-accused, the petitioner was not present. There was no question or necessity of the prosecution adducing any evidence with regard to the complicity of

the petitioner in such trials. The possibility of some of the witnesses identifying the petitioner in the trial to be held against him cannot be ruled out by this Court rationally on the basis of the materials presently available. If that be so, the petitioner's claim for quashing of proceedings must be held to be not justified at all. The decision of the Full Bench in **Moosa v. Sub Inspector of Police** (supra) concludes the question squarely.

4. This Crl.M.C is, in these circumstances, dismissed.

5. The learned counsel for the petitioner submits that if the petitioner appears before the learned Sessions Judge and applies for bail, there may be a direction that such application must be considered on merits, in accordance with law and expeditiously. It is further prayed that on such appearance, an expeditious disposal of the case may also be directed.

6. The accused has not so far appeared and I think it is absolutely unnecessary to issue any such speculative directions. Needless to say, when the petitioner appears and applies, his application for bail will have to be considered on merits, in accordance with law and expeditiously. His prayer for expeditious disposal will also have to be considered by the learned Magistrate and appropriate orders passed.

(R.BASANT, JUDGE)

rtr/-